be open to doubt and I am satisfied that the fair and proper course to adopt is to accept the Sergeant's evidence on the point, that the one he picked out on the Thursday was the same one that he picked out on Friday. I am sure you will agree with me in the circumstances that is the right and proper course to adopt. You must completely ignore anything that you may have read in the newspapers to the contrary. For it is you, and you alone, who are the judges of fact in this case. You are only to be governed by the evidence which has been given in this Court. I hope that is perfectly clear."

The first observation to be made on this matter is that the article concerned the expert witness Sergeant Adams and not the appellant himself. Secondly, there is no certainty that any of the jurors had read the article. Adopting the words used in the judgment of the English Court of Criminal Appeal in *Regina v. Armstrong* (1) at p. 75 we are of opinion that the fact that the article was published "is no ground for this Court to infer either that the jurors who tried the case had read it or that, if they had read it, they were unfit to try the case or biassed against the prisoner for the purpose of the trial." If in fact any juror had read the article we are of the view that the learned trial Judge's direction to the jury as to the right and proper course which they should adopt and his further direction that they must completely ignore anything that they might have read in the newspapers and that they were only to be governed by the evidence which had been given in Court were adequate in the circumstances of this case. A more detailed reference to the article would only have meant revealing its contents to members of the jury who might not have read it. This ground of appeal therefore fails. Before leaving this subject we think it necessary to draw the attention of all concerned to the publication in newspapers of comments on proceedings in criminal prosecutions. It is a contempt of Court to publish an article in a newspaper commenting on the proceedings in a criminal case while the trial is in progress. The publication of such an article may well result in the institution of proceedings for contempt of Court and the imposition of severe penalties on the offender or offenders.

There are other grounds of appeal on which the appellant relied. In our opinion there is no substance in any of them. The appeal against conviction must therefore be dismissed.

As to the sentence it was within the discretion of the learned trial Judge to impose a sentence of imprisonment or the death sentence. On the evidence and from the verdict of the jury it is clear that the appellant used a revolver to shoot at the Police. We see no reason to interfere with the sentence imposed by the learned trial Judge.

Appeal dismissed.

Solicitors: *Tan, Rajah & Cheah.*

AFRICAN COMMERCIAL CORPN. LTD. v. HUSSAINALI & CO.

[O.C.J. (Buttrose J.) November 7, 1958]

[Singapore — Suit No. 180 of 1958]

Sale of Goods — Foreign bill of exchange — Confirming House — Order for textiles from foreign firm through their agents in Singapore — Payment to be made through London Confirming House — Responsibility of Confirming House.

A Confirming House has only a limited responsibility and its role is purely a financial one. Its purpose is to finance contracts of sale of goods where delay between delivery on board and at port of destination is likely to be substantial. Its responsibility is to ensure that all shipping documents submitted to it by the exporter are in accordance with the order received from its oversea client. Provided the documents are in order it accepts them and draws on its oversea client.

A Confirming House is not concerned with the contract of sale and is not responsible for the quantity or quality of the goods shipped.

ACTION.

In this action the plaintiffs claim the sum of $4,191.20 being the principal, interest and notarial expenses payable by the defendants to the plaintiffs on a foreign bill of exchange drawn on May 1, 1957, by the plaintiffs in London upon the defendants and accepted by them, payable 120 days after sight. The plaintiffs are a Confirming House carrying on business in London while the defendants are a textile firm carrying on business in Singapore. The position was that the defendants placed an order for textiles with Messrs. Mercur a firm of Italian Merchants in Milan, hereinafter referred to as the exporters, through their agents in Singapore Messrs. Dearex & Company by way of indent dated December 5, 1956. The terms of the indent were that payment was to be made through a London Confirming House in this case the plaintiffs. The indent for the goods was transmitted to the exporters, the plaintiffs having been duly nominated as the Confirming House. The goods were loaded for shipment at Genoa and the plaintiffs in London opened an irrevocable letter of credit in favour of the exporters for the amount of £444 in exchange for the shipping documents which included the invoice, insurance policy and bill of lading. Having satisfied themselves that the documents were in order the plaintiffs accepted them and drew the bill of exchange, now sued upon, on their overseas client, the defendants, for the sum of £459/19/- which included the

plaintiffs' commission of 3 per cent. The plaintiffs then transmitted the shipping documents together with the bill of exchange to Singapore and the shipping documents were handed over to the defendants on July 30, 1957 against their acceptance of the bill for 60 days payment. The goods at that time were still on the water as the ship did not arrive in Singapore until August 1, 1957 and the defendants only took delivery on August 8. It was then discovered for the first time as the result of an immediate survey requested by the defendants, in the presence of the exporters' agents Messrs. Dearex & Company that a quantity of the goods ordered was missing and that the goods were of a different quality to those ordered. It was not in dispute that this was the position or that the defendants as against the exporters were entitled to reject the goods under section 30 of the Sale of Goods Act, 1893. In the first place the importers — the defendants — made a claim against the exporters' agents Messrs. Dearex & Company and then refused to honour the bill of exchange after accepting it. On behalf of the plaintiffs it was contended that they were not, as a Confirming House, in any way concerned with the quantity of the goods supplied or whether they were in accordance with the contract or not. The goods were shipped at Genoa for Singapore direct. They did not go to the London Docks and were never inspected by the plaintiffs nor, it was submitted, was it ever the duty or responsibility of a Confirming House so to do. Their role was purely and simply a financial one.

For the defendants it was maintained, *inter alia*, that the plaintiffs, as a Confirming House, had some duties to perform for the commission they received and that their sole duty was not just that of giving credit. As the order was placed through them there was an implied duty to see that the goods of the description and quantity ordered were in fact shipped and that shipment samples had been sent to the defendants. If they paid the exporters by letter of credit without confirming these matters they did so at their own risk.

K. E. Hilborne for the plaintiffs.
M. Karthigesu for the defendants.
Cur. Adv. Vult.

Buttrose J. (after stating the facts and arguments in the terms set out above, continued): It is necessary therefore to consider the position of the plaintiffs, as a Confirming House, in this transaction and to ascertain what were their duties and responsibilities in the light of the current and accepted commercial practice.

The considerable growth in the volume of overseas or international trade has brought about the formation and development of what may be described as the commercial or trade credit, better known perhaps as the bankers commercial credit. Not only bankers but Confirming or Financing Houses now give this commercial credit and the plaintiffs were such a Confirming House.

The evidence clearly established that the purpose of a Confirming House is to finance contracts of sale of goods where the delay between delivery on board and at the port of destination is likely to be substantial and neither the exporter nor the importer are anxious to have their capital tied up during shipment. Merchants accordingly have increasingly availed themselves of the accommodation facilities offered by Confirming Houses which in return for an agreed commission furnish the credit that the merchants themselves are unable or unwilling to afford. The Confirming House makes no profit on the actual goods. Its responsibility is to see that all the documents submitted by the exporter are in accordance with the order, a copy of which has been sent to it by its overseas client. Providing the documents are in order it accepts them and draws on the overseas client.

It is also, I think, quite clear from the evidence that a Confirming House has no responsibility for the quantity of the goods shipped or their quality and in the event of consignments being lost in transit the overseas client has no recourse on the Confirming House. His claim, in such circumstances, would be on the Insurance company and if payment by the Insurance company was delayed the overseas client would still be liable to meet his accepted draft on the due date. The accepted practice in the market today is not to accept documents until the arrival of the carrying steamer. With a d-a-draft, (i.e. documents against acceptance) such as the one sued on, the Bank presents the bills as soon as they are received by them to the purchaser who then instructs the Bank to represent on arrival of the carrying steamer. A Confirming House is not concerned with the quality of the goods. It is impossible for it to make physical inspection of them and it never does so.

I am quite satisfied on the evidence that the plaintiffs acted solely as a Confirming House in this case and that their role was purely a financial one.

Whatever remedies the defendants themselves may have against the exporters or their agents or the Insurance company they cannot, in the view I take, resist the claim on the bill of exchange accepted by them in the circumstances of this case.

It was argued on behalf of the defendants that as the defendants had rejected the goods as not in accordance with the contract the consideration on which the bill of exchange was drawn on them had failed and they were not therefore liable on the bill. But the commercial

credit serves merely to interpose between exporter and importer a third party usually of undoubted solvency and repute who renders a service by paying the exporter right away and giving a substantial margin of credit to the importer — the defendants in this case. The plaintiffs were never concerned with the contract of sale.

There was, in my opinion, an absolute acceptance of this bill of exchange by the defendants.

In the result therefore there must be judgment for the plaintiffs for the amount claimed with costs.

Claim allowed.

Solicitors: *Hilborne & Co.; Allen & Gledhill.*

NAM THIAM SIEW v. CHUANG WAI LAN

[C.A. (Thomson C.J., Smith and Neal JJ.)
December 27, 1958]

[K.L. — F.M. Civil Appeal No. 56 of 1957]

*Damages — Loss of support — Assessment — Civil Law Enactment, F.M.S. No. 3 of 1937 — Johore Civil Procedure Rules, O.4 r.3A.**

Costs — Unnecessary matter included in appeal record — Deduction from costs.

This was an appeal relating to the quantum of damages awarded to the respondent for the death of her husband in a road accident. When the case was originally tried the learned Judge found that the death was due to the negligent driving of the defendant's vehicle and ordered judgment to be entered for the respondent for damages to be assessed by the Assistant Registrar. The Assistant Registrar held an enquiry and assessed the general damages at $36,000. The respondent appealed to the High Court and the learned Judge awarded damages for loss of support at $84,000. He arrived at this figure by multiplying the annual value of support which the dependents were receiving from the deceased, which he assessed at $6,000 a year, by 14 as he estimated the future span of working life of the deceased to be 14 years. On appeal against that award,

Held: (1) the amount of damages in this case was pre-eminently a matter of assessment and not a matter of mere calculation and the trial Judge was therefore wrong in ordering the damages to be assessed by the Assistant Registrar, but in this case the irregular assumption of jurisdiction had been waived;

(2) the award of $84,000 for loss of support cannot stand as there was an error in calculating the damage and also an error in arriving at the figure of the estimated value of the loss of support.

* See now R.S.C., O.36 r.57.

COURT OF APPEAL, Appeal from Johore Bahru.

Denis Murphy and *Omar bin Salleh* for the appellant.

C. H. Withers Payne and *R. Murugason* for the respondent.

Cur. Adv. Vult.

Thomson C.J.: This is an appeal from a decision of Hepworth, J., awarding $86,500 damages to the respondent for the death of her husband in a road accident. The only question involved is as to the *quantum* of damages.

The respondent is the widow and the administratrix of the estate of one Lim Jit Yang who died on 3rd August, 1955, as a result of injuries which he received in a road accident on 1st August, 1955. It was alleged that the fatal injuries were caused by the negligent driving of the appellant's lorry and the respondent sued as administratrix and on behalf of herself and the other dependants of the deceased under the provisions of the Civil Law Enactment.

The case was originally tried by Shepherd, J., who found that the death was due to the negligent driving of the defendant's vehicle and ordered judgment to be entered for the respondent for damages to be assessed by the Assistant Registrar.

Presumably this order for the assessment of damages by the Assistant Registrar was made under O.4 r.3A of the Johore Civil Procedure Rules which were in force at the material time but have since been repealed but in my opinion it should not have been made. In the first place the rule under which it was made only applies where "it appears to the Court that the amount of damages sought to be recovered is substantially a matter of calculation." Here the amount of damages was pre-eminently a matter of assessment and not a matter of mere calculation. In any event the provisions of the rule are permissive and it is difficult to think of any matter which calls more insistently for the exercise of his judicial functions by a trial Judge than the assessment of damages in a case of this nature.

Be that as it may, however, no objection was taken to this course by either of the parties and the case has now reached the stage where it must be assumed that both parties have consented to its being dealt with on the basis that at the worst there has been an irregular assumption of jurisdiction which has been waived rather than any complete failure of jurisdiction.